IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WA.No. 249 of 2004(E)

AGAINST THE JUDGEMENT IN OP.5295/2003 Dated 04/09/2003
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APPELLANT/PETITIONER.

M/S.SWAPANA BONE MEAL CO.PVT.LTD.,
J-7, FISH MARKET ROAD, PERUMBAVOOR,
REP. BY ITS MANAGING DIRECTOR,
K.H.ABDULLA, S/O.HASSAN,
RESIDING AT KONNANKUDY HOUSE,
WARD NO.19, PERUMBAVOOR.

BY ADV. DR.K.B.MUHAMED KUTTY (SR.)
SRI.K.M.FIROZ

RESPONDENTS/RESPONDENTS
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1. THE DISTRICT LEVEL COMMITEE FOR SALES TAX EXEMPTION, REP. BY ITS MEMBER SECRETARY, GENERAL MANAGER, DISTRICT INDUSTRIES CENTRE, ERNAKULAM.

2. THE STATE LEVEL COMMITTEE FOR SALES TAX EXEMPTION, REP. BY ITS MEMBER SECRETARY, THE DIRECTOR OF INDUSTRIES AND COMMERCE, VIKAS BHAVAN, THIRUVANANTHAPURAM.

3. THE SALES TAX OFFICER, IST CIRCLE, PERUMBAVOOR.

4. THE DEPUTY TAHSILDAR, REVENUE RECOVERY, ALUVA.

BY SR.GOVERNMENT PLEADER MR.MOHAMMED RAFIQ

THIS WRIT APPEAL HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN, J.

W.A.No.249 of 2004

Dated, this the 24th day of September, 2007

JUDGMENT

H.L.Dattu, C.J.

The appellant before us is the manufacturer and seller of crushed bones. He has established a small scale industrial unit. Immediately after the establishment of the unit, he had approached the District Level Committee to issue a certificate providing for exemption from payment of sales tax as provided in the notification SRO 1729/1993. The District Level Committee has rejected the claim of the petitioner by its order dated 6.1.2000 (Ext.P3). The order so passed by the District Level Committee is as under:

PROCEEDINGS OF THE GENERAL MANAGER, DIST. INDUSTRIES CENTRE, ERNAKULAM

Present : K.G.RADHAN.

Industries - Salestax Exemption - Application of M/s. Swapna Bona Meal Company Private Limited, Arackappady - rejected - orders issued.

No.AB/9332/98. Dated 6-1-2000.

Read:- 1) Letter dated 26-3-98 of M/s. Swapna Bonemeal Company Private Limited, Arackappady.
2) Minutes of District Level committee for salestax Exemption held on 24-12-1999.

M/s. Swapna Bone Meal Company Private Limited is a registered SSI unit vide registration No.25781 dated 13-1-98 for the Production of Crushed Bones, Bone meal and Mutton Tallow. The unit has commenced production on 22-9-1997 and applied for Salestax Exemption vide paper Ist read above.

As per the Judgment in O.P.No.4207/99-A by M/s.Plathottam Bonemeal Industries V/s. The State of Kerala and A.L.Sulaiman V/s. The Deputy Commissioner of Salestax reported

in 1999 KLJ 513 it was held that there is no manufacturing process in convertion of dry bone to bonemeal. Hence the District Level committee held on 24-12-99 resolved to reject the application of the unit vide paper 2nd read above.

O R D E R

In the above circumstances the Salestax Exemption application of M/s.Swapna Bone Meal Company Private Limited, Arackappady is hereby rejected.

GENERAL MANAGER."

(2) Petitioner, being aggrieved by the said order, had filed appeal before the State Level Committee for sales tax exemption. The said Committee by its order dated 17.9.2002 has rejected the appeal. While doing so, they have stated as under:

PROCEEIDINGS OF THE DIRECTOR OF INDUSTRIES AND COMMERCE, VIKAS BHAVAN, THIRUVANANTHAPURAM.

(Present : P.H. KURIEN IAS)

No.FO.3/7008/00Kdis Dated: 17.9.02.

Sub: Industries - Sales Tax Exemption Appeal
M/s. Swapna Bone Metal Company Pvt.Ltd.,
Ernakulam rejected -orders issued.

Read:- 1. Appeal of the unit dt.13.3.00
2. Decision of the SIC on Sales Tax Exemption held on 24/6/02.

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M/s.Swapna Bone Meal Company (Pvt) Ltd., Arackanady, Perumbavoor is a registered SSI Unit which is engaged in manufacturing of Bone Meal and Mutton Tallow which started commercial production on 22/9/97. The DLC on Sales Tax Exemptions held on 24/12/99 resolved to reject their application for Sales Tax Exemption based on the judgment in O.P.No.4207/99/(R) by M/s.Plathottam Bonemeal Industries V/s.

State of Kerala and A.Sulaiman V/s. The Commissioner of Sales Tax. It was both that there is as manufacturing process in the conversion of bone to bone meal. The unit appealed before the SIC to reconsider the decision of the District Level Committee. The Committee held on 24/6/2002 heard the appellant and discussed the matter in detail and decided to disallow the appeal on the same ground that the production of bone meal does not amounts to manufacturing.

O R D E R

In the circumstances stated above the appeal of M/s.Swapna bone meal Company (Pvt.) Ltd. Perumbavoor is rejected as the production of Bone meal does not amounts to manufacturing.

Sd/-

DIRECTOR OF INDUSTRIES & COMMERCE"

(3) Aggrieved by these two orders the petitioner was before this Court in O.P.No.5295 of 2003. The learned Single Judge by his order dated 4th September, 2003 has rejected the writ petition. That is how the petitioner is before us in this appeal.

(4) Dr.K.B.Mohammedkutty, learned senior counsel appearing for the appellant, would submit, that, when raw bones are converted into crushed bones there is a manufacturing activity and therefore the petitioner is entitled to the benefit of the notification issued by the State Government under SRO 1729/1993 which has come into force on 1st of January, 1994. Apart from this learned counsel would submit that the orders passed by the respondents are cryptic orders; and it contains no reasons and therefore, the said orders are no orders in the eye of law. Therefore, he submits that the orders passed by the respondents require to be set aside by this Court and this Court should declare that the petitioner is eligible for exemption under the notification SRO 1729/1993.

(5) Per contra, Sri.Mohammed Rafiq, learned Senior Government Pleader appearing for the Revenue, would submit that by crushing of raw bones into crushed bones, there is no manufacturing activity involved, since no different commodity as such emerges from such process and therefore, the authorities under the Act are justified in rejecting the claim made by the petitioner for grant of exemption under SRO 1729/1993. In support of that contention leaned Government Pleader relies upon the view expressed by the apex Court in the case of *A.A.Sulaiman* v. *Deputy Commissioner of Sales Tax* [(1997) 105 STC 324] and also the observations made by a Bench of the Madras High Court in the case of *the State of Tamil Nadu* v. *Subbaraj and Co*. [(1981) 47 STC 30].

(6) A Division Bench of the Madras High Court in the case of *Subbaraj and Co*. had occasion to consider whether the conversion of raw bones into crushed bones, there is any manufacturing activity or not. After referring to all the earlier decisions of the apex Court, the Division Bench of the Madras High Court has come to the conclusion that by the conversion of raw bones into crushed bones, it would not result in any manufacturing activity as such. The reasoning adopted by the learned Judges is as under:

> "As pointed out by the Kerala High Court in its judgment, the most significant word occurring in section 7-A(1)(a) of the Act is the word "consumes". Inasmuch as the goods purchased are not consumed in the process of manufacture of some other goods, section 7-A(1)(a) will not be attracted. The very use of the word "consume" contemplates that the goods purchased should have been devoured or exhausted in the process of manufacture with the result, its identity must have been completely lost. So long as its identity remained, the goods purchased and used in the manufacture of some other goods cannot be said to have been consumed in the process of manufacture of other goods. It is against this background, we have to consider the question raised in this case.

> We have already referred to what the dealers purchased in these cases and the processes they adopt for bringing into existence the end-product. From what we have stated it is clear that the raw bones purchased by the dealers in these cases cannot be said to have been consumed in the process of bringing into existence the crushed bone, bone grist, bone-meal, fluff or horn hoof, apart from the distinctive meaning that will have to be attributed to the word "manufacture"."

(7) The apex Court in the case of *A.A.Sulaiman's case* while affirming the view expressed by the Madras High Court in the case of *Subbaraj and Co.* has stated as under:

> "A dealer who purchases dry bones and converts them into bonemeal for sale as such in the market is not liable to pay purchase tax under section 5A(1) of the Kerala General Sales Tax Act, 1963."

(8) At this stage it is apropos to mention that Section 5A(1) of the Kerala General Sales Tax Act, 1963 ('the Act' for short) provides for levy of purchase tax. Under the aforesaid section purchase tax is leviable on every dealer who purchases from a registered dealer or from any other person any goods, the sale or purchase of which is liable to tax under the Act, in circumstances in which no tax is payable under sub-sections (1), (3), (4) or (5) of section 5 and either, consumes such goods in the manufacture of other goods for sale or otherwise.

(9) The notification issued by the State Government under SRO 1729/1993 also defines the meaning of the expression "Manufacture". The said definition requires to be extracted and the same reads as under:

> "'Manufacture' shall mean the use of raw materials and production of goods commercially different from the raw materials used but shall not include mere packing of goods, polishing, cleaning, grading, drying, blending or mixing different varieties of the same goods, sawing, garbling, processing one

> form of goods into another form of the same goods by mixing with chemicals or gas, fumigation or any other process applied for preserving the goods in good condition or for easy transportation. The process of producing desiccated coconut out of coconut, chemical treatment of rubber wood and production of dressed or tanned hides out of raw hides shall be deemed to be 'manufacture' for the purpose of this notification.
>
> The following process shall not be deemed to be 'manufacture' for the purpose of this notification:-
>
> (a) Crushing copra and producing coconut oil and coconut oil cake.
>
> (b) Converting timber logs into timber sizes.
>
> (c) Crushing rubble into small metal pieces.
>
> (d) Converting sodium silicate into liquid silicate.
>
> (e) Tyre-retreading
>
> (f) Cutting granite or marble slabs into smaller pieces and polishing them.
>
> (g) Such other process as may be notified by Government in this behalf."

(10) As a general rule, all exemptions or other concessions granted under the statute should be strictly construed as they create inequalities before the law and any interpretation adopted should not extend the benefit beyond the express language used in the notifications granting them.

(11) The meaning that requires to be given to the expression 'Manufacture' is provided in the notification itself. It means the use of raw materials and production of goods commercially different from the raw materials used.

(12) In the instant case, it is the case of the assessee that he purchases raw bones and converts them into crushed bones and therefore, there is a manufacturing activity and entitled for exemption under the aforesaid

notification.

(13) The concept of “manufacture” is well explained by the apex Court in various decisions, starting from *Deputy Commissioner of Sales Tax* v. *Pio Food Packers* [(1978) 41 STC 364] and upto *M/s.Aspinwall & Co. Ltd.* v. *The Commissioner of Income Tax, Ernakulam* (2001 AIR SCW 3444). In all these decisions a clear distinction is made between the concept of process and also the manufacture. To fall within the expression of 'manufacture', raw materials should undergo a change and because of such a change a commercially different commodity should emerge. In the instant case, as we have already stated, the appellant purchases raw bones and thereafter crushes them into “crushed bones” by using machines. This activity of the appellant would not fall within the meaning of the expression 'manufacture', since no commercially different commodity would emerge because of such conversion.

(14) However, Dr.Mohammedkutty, the learned senior counsel would bring to our notice a decision of a Full Bench of this Court in the case of *R.Suresh Kumar* v. *State of Kerala and another* [(2005) 13 KTR 70 (Ker.)]. That was a case pertaining to conversion of tamarind seed into tamarind powder. The question before the Court was whether such conversion would amount to manufacture. The learned Judges of this institution after referring to various decisions have come to the conclusion that conversion of tamarind seed into tamarind powder is manufacture.

(15) The case on hand is entirely different from the facts stated in the aforesaid decision. In the present case we are concerned with conversion of raw bones into crushed bones and in view of what has been said by the apex Court in *A.A.Sulaiman's case,* we cannot hold that such conversion would

amount to a manufacturing activity. In view of the above, the appellant is not entitled to claim any exemption under SRO 1729/1993.

(16) The learned counsel also submits that the respondent authorities while rejecting the claim of the appellant have assigned no reason whatsoever to deny the claim of the appellant and therefore, the orders are cryptic and non-speaking orders and they are not orders in the eye of law. We cannot accept the submission made by the learned counsel for the appellant. The authorities under the Act after referring to the activity of the appellant and also relying upon what has been said by the apex Court in *A.A.Sulaiman's case* have rightly, in our opinion, observed in their orders that the activity of the appellant would not amount to a manufacturing activity and therefore, is not entitled for any exemption as claimed in the application.

(17) In view of the above, the writ appeal filed by the appellant requires to be rejected and it is rejected by affirming the orders passed by the learned Single Judge and the authorities under the Act. In the peculiar facts and circumstances of the case, the parties are directed to bear their own costs.

Ordered accordingly.

(**H.L.DATTU)**
CHIEF JUSTICE

(K.T.SANKARAN)
JUDGE

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